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January 23, 2009

VIA HAND DELIVERY

The Honorable Anne K Quinlan
Secretary
Surface Transportation Board
395 F. Street, SW
Washington, D C 20423-0001

ENTERED
Office of Proceedings

JAN 23 2008

Part of
Public Record

Re Docket No 42110, Seminole Electric
Cooperative, Inc v CSX Transportation, Inc

Dear Secretary Quinlan

Enclosed for filing in the referenced proceeding please find an original and 10 copies of Complainant's First Motion to Compel Discovery, along with a compact disk containing an electronic version of the Motion and Exhibits

An additional copy of the Motion also is enclosed. Kindly indicate receipt and filing by time-stamping this extra copy and returning it to the bearer of this letter

Thank you for your attention to this matter

Sincerely,

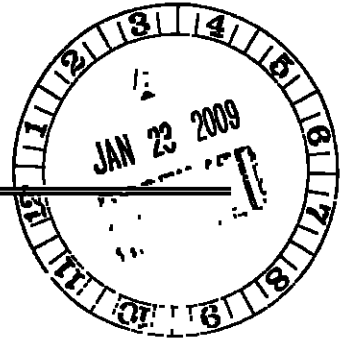
A handwritten signature in black ink, appearing to read "Kelvin J Dowd".

Kelvin J Dowd
An Attorney for Seminole Electric
Cooperative, Inc.

KJD lad
Enclosures

224386

BEFORE THE
SURFACE TRANSPORTATION BOARD



SEMINOLE ELECTRIC COOPERATIVE,
INC.

Complainant,

v.

CSX TRANSPORTATION, INC.

Defendant.

Docket No. 42110

COMPLAINANT'S FIRST MOTION TO COMPEL DISCOVERY

Pursuant to 49 C F R Part 1114.31, Complainant Seminole Electric Cooperative, Inc ("SECI") moves the Board for an order compelling Defendant CSX Transportation Inc ("CSXT") to promptly produce, in full, documents and information responsive to SECI's Fourth Requests for Production of Documents ("Fourth Requests"). A copy of the Fourth Requests, which were served on December 15, 2008, is attached hereto as Exhibit No. 1. A copy of CSXT's Responses and Objections to the Fourth Requests ("Responses"), which were served on January 14, 2009, is attached hereto as Exhibit No. 2. In support hereof, SECI shows as follows:

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BACKGROUND

This proceeding concerns a challenge by SECI to the reasonableness of certain common carrier rates established by CSXT for the transportation of coal in unit trains from mine origins and origin groups in Kentucky, Illinois, Indiana, West Virginia and Pennsylvania to SECI's Seminole Generating Station near Palatka, Florida. The Complaint requests that the Board examine the reasonableness of the rates at issue using its Constrained Market Pricing methodology as set forth in *Coal Rate Guidelines - Nationwide*, 11 C.C. 2d 520 (1985), *aff'd sub nom., Consolidated Rail Corp. v. United States*, 812 F. 2d 1444 (3rd Cir. 1987) ("*Coal Rate Guidelines*"), and as subsequently interpreted and applied in previous coal rate proceedings.

A central feature of the *Coal Rate Guidelines* is the stand-alone cost ("SAC") test, pursuant to which, *inter alia*, a party in SECI's position is entitled to design a hypothetical, optimally efficient substitute transportation system adequate to handle the issue traffic, and other traffic currently handled by CSXT which reasonably may be "grouped" with the issue traffic. *Id.*, 11 C.C. 2d at 544. In assembling such a traffic group, complainants in coal rate proceedings typically identify a subset of the defendant's traffic base, and assemble data relevant to the costs of the assets, facilities and personnel needed to handle that traffic, as well as the revenues that the hypothetical transporter could earn in exchange. *Simplified Standards for Rail Rate Cases*, STB Ex Parte No. 646 (Sub No. 1) (STB served September 5, 2007), *see also Public Service Co. of CO d/b/a/ Xcel Energy v. The Burlington Northern & Santa Fe Ry. Co.*, STB Docket No. 42057 (STB served January 19, 2005) at 3.

In this case, SECI is designing a stand-alone railroad ("SARR") that would replicate some of the infrastructure and related assets and services used by CSXT to serve customers whose traffic shares the CSXT lines used to serve SECI. Among the classes of CSXT traffic to be considered for inclusion in the SARR system is intermodal traffic. However, on information and belief, and based on publicly available documents, CSXT is not solely responsible for all functions related to the intermodal traffic that moves over its lines. A corporate affiliate, CSX Intermodal, Inc. ("CSXI"), apparently markets most (if not all) of the intermodal services that include rail transportation over CSXT's lines, and collects the full revenue for those services, with CSXT being assigned a portion of the revenue intended only to cover its actual operating costs. See CSXT 2007 Annual Report R-1 ("CSXT R-1") at 14B.

In order to discover information regarding the full range of assets and services necessary for the handling of intermodal traffic over CSXT lines, and the full measure of revenue available from that traffic, SECI propounded its Fourth Requests, all of which are directed toward CSXI's operating activities and financial data. As detailed in Exhibit No. 1, RFP No. 105 asks for documents related to trailers and containers handled by CSXI during the relevant time period, including revenues earned on the service. RFP No. 106 seeks documents sufficient to show the linkage between CSXI trailers and containers and CSXT rail cars, as captured in the CSXT train movement records that already have been and/or are being produced. RFP No. 107 requests documents explaining how CSXT bills CSXI for rail-related transportation services and how payments to CSXT are recorded. RFP No. 108 seeks documents showing assets

owned by CSXT and CSXI in connection with intermodal yards or terminals serviced by CSXI RFP No 109 requests a copy of the operating agreement between CSXT and CSXI RFP No 110 asks for documents identifying trailers or containers purchased or leased by CSXI, and RFP No 111 covers documents describing other physical assets that are or have been owned or leased by CSXI and used in connection with its services RFP No 112 asks for documents related to personnel employed by CSXI RFP No 113 requests documents describing services purchased by CSXI from third parties

In its Responses, CSXT offered only to produce documents related to payments made by CSXI to CSXT (Exhibit No 2 at 9), intermodal assets owned or leased by CSXT (as opposed to CSXI) (*id* at 10), and the operating agreement sought in RFP No 109 (*id*) Otherwise, CSXT objected to the production of any documents or data related to CSXI, alleging the following

- 1 CSXI is a separate company and not a party to this proceeding (RFP Nos 105-108, 110-113),
- 2 a substantive response would require performance of a "special study" (RFP Nos 105, 106, 110-113),
3. requested data is irrelevant (RFP No 107), and
- 4 SECI's requests are "overbroad" (RFP Nos 107, 111-113)

As explained, *infra*. CSXT's objections are without merit, and should be overruled The Board should order the prompt production of all documents and data sought in SECI's Fourth Requests

ARGUMENT

The Board's discovery rules accord SECI the right to "obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding " 49 C F R Part 1114.21(a)(1). Complainants have broad discovery rights under the Board's rules¹, which follow the policies reflected in the Federal Rules of Civil Procedure². In particular, in cases brought by shippers under the Constrained Market Pricing methodology, the Board and its predecessor repeatedly have held that defendant railroads are subject to broad discovery. *See, e.g., Coal Rate Guidelines*, at 548 ("We recognize that shippers may require substantial discovery to litigate a case under CMP, and we are prepared to make that discovery available to them"). The documents requested by SECI in its Fourth Requests are entirely appropriate in the context of this rate reasonableness case.

¹ *Simplified Standards for Rail Rate Cases*, at 69. *See also Ocean Logistics Mgmt., Inc. v. NPR, Inc., and Holt Cargo Sys.*, STB Docket No. WCC-102 (STB served Jan. 14, 2000) at 2 ("discovery is very broad" and parties are "expect[ed] to comply with discovery in a prompt and forthright manner"), *General Exemption Authority – Misc. Agricultural Commodities – Petition of G. & T. Terminal Packaging Co., Inc.*, ICC Ex Parte No. 346 (Sub-No. 14A) (ICC decided June 6, 1989) 1989 WL 238737 at *3.

² *See, e.g., Simplified Standards for Rail Rate Cases*, at 68-69 ("[o]ur discovery rules follow generally those in the Federal Rules of Civil Procedure")

A. CSXT's Status As a Party or a Carrier Is Irrelevant

CSXT's broadest objection, leveled against each of SECI's Fourth Requests save one, claims that documents or data related to CSXI should not be discoverable because "CSXT and CSXI are separate corporate entities CSXI is neither a party to this litigation, nor a carrier regulated by the Board " Responses at 8, 9, 10, 11, 12, 13 However, CSXI's status as a party or a carrier is completely irrelevant to the question of discoverability Proceedings under the *Coal Rate Guidelines* routinely involve the production of documents and information related to non-parties and non-carriers, including third party service providers³, interline transportation partners⁴, coal suppliers⁵, and consultants⁶ Indeed, SECI already has produced documents related to non-parties unaffiliated with SECI in response to CSXT's own discovery requests⁷ The correct inquiry is whether CSXT has control over the requested information, as the term

³ *Western Fuels Association, Inc. and Basin Electric Power Coop v BNSF Ry Co*, STB Docket 42088 (STB served September 10, 2007) (disclosure of third party fuel reloading costs), and *Texas Municipal Power Agency v Burlington Northern and Santa Fe Ry Co* STB Docket No 42056 (STB served March 13, 2001) (granting a motion to compel a joint facility agreement).

⁴ *Texas Municipal Power Agency* (STB served March 24, 2003) (third party interline data)

⁵ *AEP Texas North Co v BNSF Ry Co*, STB Docket No 41191 (Sub-No 1) (STB served September 10, 2007) (third party mine loading costs)

⁶ *Wisconsin Power & Light Co v Union Pacific R R Co*, STB Docket No 42051 (STB served June 21, 2000), and *FMC Wyoming Corp and FMC Corp v Union Pacific R R Co*, STB Docket No 42022 (STB served February 5, 1998)

⁷ See *Defendant's First Requests for Production of Documents*, November 7, 2008 at 17-18

generally is understood for purposes of discovery in litigation, and whether the documents and data are relevant to matters at issue in this proceeding. Both questions should be answered in the affirmative.

Public information confirms that CSXT and CSXI are close affiliates that share information regularly and work to coordinate marketing efforts with respect to intermodal traffic. *See, e.g.*, CSXT R-1 at 14B. The Board previously has recognized the close relationship among CSXT, CSXI and their common parent,⁸ and on at least one occasion has directed CSXT to produce information related to CSXI's costs and operating statistics for regulatory purposes. *See Railroad Cost Recovery Procedures -- Productivity Adjustment*, STB Ex Parte No. 290 (Sub-No. 4) (STB served January 31, 2003) at 2. The commonality of ownership, regular exchange of information in the ordinary course of business, and collaborative efforts in the marketing and delivery of intermodal services clearly support the conclusion that CSXT has control over its affiliate's documents and information sufficient to respond substantively to SECI's discovery requests. *Uniden America Corporation v. Ericsson Inc.*, 181 F.R.D. 302, 305-307 (M.D.N.C. 1998).

The relevance of information concerning CSXI's services, assets, facilities and revenues also is clear. Board precedent confirms that relevance is established when the "information might be able to affect the outcome of the proceeding." *Canadian Pac. Ry. Co. -- Control -- Dakota, Minn. & E.R.R. Corp.*, STB Finance Docket No. 35801.

⁸ *See CSX Corporation and CSX Intermodal, Inc. -- Control--Customized Transportation, Inc.*, STB Docket No. 32182 (STB served December 18, 1992) at *1.

(STB Decision No. 8 served Mar. 27, 2008) at 1. The composition of a SARR's traffic group and the attendant costs and available revenues is central to the SAC determination and, by extension, to the outcome of this proceeding. Available public information indicates that intermodal traffic moving over CSXT's lines actually is marketed by CSXI, which also collects the full revenue and rebates to CSXT only "an amount that approximates actual costs" incurred by CSXT for the rail portion of the service. CSXI R-1 at 14B. Without access to the CSXI data sought in its Fourth Requests, SECI will not be able to assess the full measure of revenue associated with the inclusion of CSXT's intermodal traffic in its SARR configuration, or the non-rail costs associated with the service that generates that revenue. As it appears that all revenues above those needed to cover CSXI's "actual costs" are credited to CSXI, lack of access to this affiliate's documents and data would unfairly prejudice SECI in its legitimate effort to assemble the optimal and most cost-efficient SARR traffic group.

Analogous court decisions affirm that CSXT should not be permitted to simply invoke the "separate" corporate status of CSXI as a bar to discovery of data and documents concerning business arrangements between these obviously related parties. "Among transactions calling for close inspection are related-party transactions. [s]uch dealings are viewed with extreme skepticism in all areas of finance." *McCurdy v. Securities and Exchange Commission*, 396 F.3d 1258, 1261 (D.C. Cir. 2005). "The reason for this is apparent. Although in an ordinary arms-length transaction, one may assume that parties will act in their own economic self-interest, this assumption breaks down when the parties are related." *Id.* See also *Gordon v. Commissioner of Internal*

Revenue, 85, T C 309, 325-326 (1985) (citing *Vaughn v Commissioner*, 81 T C 893, 908 (1983) (“Where both parties to the transactions in question are related, the level of skepticism as to the form of the transaction is heightened, because of the greater potential for complicity between related parties in arranging their affairs ”))

The CSXI-related documents and data covered by the Fourth Requests are relevant to a proper determination of the costs, traffic and revenues for a prospective SARR system in this case, and the relationship between CSXT and CSXI is such that the former should be deemed to possess or control such documents and data for discovery purposes. CSXT’s blanket objection to the production of any information related to CSXI should be overruled.

B. The Fourth Requests Do Not Require “Special Studies”

CSXT objects to RFP Nos. 105, 106 and 110-113 “to the extent that [they require] CSXT to perform a special study by compiling and organizing data and documents in a manner different from how those data and documents are kept in the ordinary course of business.” Responses at 8. SECI’s Fourth Requests seek only data and documents as retained by CSXT in the regular course of business, so this objection likewise should be overruled. In the interests of fairness and efficiency through the conclusion of the discovery process, however, the Board also should clarify what would constitute a “special study.”

Historically, the “special studies” objection was upheld when compliance with a discovery request would require a party to gather data that it otherwise did not retain in the ordinary course of its business, or conduct an analysis of retained data that

just as easily could have been performed by the requesting party. *See Entergy Arkansas, Inc. and Entergy Services Inc. v. Union Pacific R.R. Co., Inc.*, STB Docket No. 32817 (STB served May 19, 2008) at 6; *Northern States Power Co. d/b/a Xcel Energy v. Union Pacific R.R. Co.*, STB Docket No. 42059 (STB served May 24, 2002) at 6. This reasonable description should be distinguished from a discovery request that simply asks for defined categories of information from a larger database, or an explanation or illustration of the manner in which a railroad's different databases may be searched or linked. With the preponderance of railroad data relevant to various elements of the SAC determination now stored in computer files, the "special study" exception would swallow the general discovery rule if a defendant railroad could invoke it whenever a complainant asked for a data search or report that does not exist "on the shelf", but readily could be provided if requested by railroad management. SECI's RFP Nos. 105, 106 and 110-113 do not require CSXT to conduct "special studies" as the term traditionally has been understood. Rather, to varying degrees, they ask only that CSXT query certain databases that are maintained by CSXT in the ordinary course of business, and report and/or explain the utility of specific data classes or categories. The Board should direct CSXT to respond substantively to these Requests.

C. Information Regarding CSXI's Margin or Profit Is Relevant

CSXT has objected to subpart (f) of RFP No. 107, on the ground that information regarding CSXI's margin or profit on intermodal traffic that is handled by CSXT is irrelevant. The objection should be overruled. As noted *supra*, relevance is established if the information in question might affect the outcome of a

proceeding *Canadian Pac Ry Co ; Waterloo Railway Company - Adverse Abandonment – Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company In Aroostook County, Maine*, STB Docket No AB-124 (Sub-No 2) (STB served Nov 14, 2003) ⁹ Available information and documents indicate that revenues from intermodal traffic handled by CSXT are allocated within the CSX corporate family between CSXT and CSXI, with CSXT credited only for that portion which is calculated to cover its actual operating costs All remaining revenue, which would include the full margin or profit on the overall intermodal move (including the rail portion), is left with CSXI Data respecting CSX Corporation's internal assessment of the profitability of CSXT/CSXI intermodal traffic is relevant to the question of the degree to which the revenues that would be available to a SARR if it replicated the CSXT/CSXI service would exceed the total costs attributable to that service. Under the relevance standard reflected in *Canadian Pac Ry Co , supra*, CSXT should be compelled to produce the requested data

⁹ In addition, it is well-settled that the Board's discovery rules are to be liberally construed *See, e g , Bar Ale, Inc California Northern R R , Finance Docket No 32821* (STB served March 15, 1996) at 2

**D. CSXT Has Not Provided the Specificity
Needed to Sustain its Overbreadth Objection**

Finally, CSXT objects to RFP No. 107 and 111-113 on grounds that they are “overbroad.” Responses at 9, 12-13. However, the only specifics offered in support of the objection is a reference to SECI’s request that the documents produced in response to RFP Nos. 111-113 be sufficient to describe the identified subject matter “in detail.” *Id.* The objection should be overruled.


A party responding to a discovery request is required to give substantive responses. “boilerplate, generalized responses are not sufficient to satisfy a party’s discovery obligations.” *Trailer Bridge, Inc. v. Sea Star Lines, LLC*, STB Docket No. WCC-104 (STB served Oct. 27, 2000) at 8. “An objection to a discovery request cannot be merely conclusory, and that intoning the ‘overly broad and burdensome’ litany, without more, does not express a valid objection.” *Mead Corp. v. Riverwood Natural Resources Corp.*, 145 F.R.D. 512, 515 (D. Minn. 1992). In its overbreadth objection, CSXT offers little more than just such a generalization, and no explanation as to how SECI’s request for detail broadens the scope of CSXT’s search obligations. Indeed, by targeting its request to documents *sufficient to show* the subject matter, SECI is allowing CSXT to limit production to the responsive documents that provide the most detail, redundant documents that are more general in nature and contain no additional responsive information need not be provided.

CONCLUSION

For the foregoing reasons, the Board should overrule CSXT's objections and compel substantive responses to SECI's Fourth Requests for Production of Documents

Respectfully submitted

SEMINOLE ELECTRIC
COOPERATIVE, INC

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Dated January 23, 2009

Attorneys & Practitioners

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**SEMINOLE ELECTRIC COOPERATIVE,)
INC.)
)
Complainant,)
)
v.) **Docket No. 42110**
)
**CSX TRANSPORTATION, INC.)
)
Defendant.)
)****

**COMPLAINANT'S FOURTH REQUESTS
FOR PRODUCTION OF DOCUMENTS TO DEFENDANT**

Complainant Seminole Electric Cooperative, Inc. ("SECI"), pursuant to 49 C.F.R. Part 1114.30, hereby submits its Fourth Requests for Production of Documents ("Fourth Requests") to Defendant CSX Transportation, Inc. ("CSXT").

Copies of documents responsive to SECI's Fourth Requests should be delivered to the offices of Slover & Loftus within thirty days from the date hereof, unless otherwise agreed by the parties. SECI is prepared to cooperate with CSXT to facilitate the expeditious production of responsive documents with the minimum practical burden.

I. DEFINITIONS AND INSTRUCTIONS

The definitions and instructions set forth in SECI's First Requests for Admissions, Interrogatories, and Requests for Production of Documents to Defendant ("First Requests"), as subsequently modified in SECI's Second Requests for Production of Documents, also apply with respect to these Fourth Requests.

II. ADDITIONAL REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 105:

Please produce the databases and computer programs (with all documentation related to these data bases and computer programs), in a computer readable format, sufficient to show all of the data requested in SECI's Request for Production No. 23 in Seminole's First Requests for each trailer and container handled by CSX Intermodal, Inc. ("CSXI") during the same time period, including but not limited to revenue received by CSXI from its customers ("freight revenue"), in connection with any traffic described in SECI's Request for Production No. 23, for each year or partial year 2006 to the present.

REQUEST FOR PRODUCTION NO 106:

Please provide documents or data sufficient to show the link or tie between each train/container identified in your response to Request for Production No. 105 and the CSXT flat or intermodal car appearing in the CSXT waybill/car movement/train movement records or files that CSXT will produce pursuant to SECI's Request for

Production Nos. 23, 46 and 47. If there are no records for CSXT flat cars in the CSXT waybill file, please identify or produce documents sufficient to show the authority used by CSXT and CSXI to move flat cars with CSXI trailers or containers over CSXT lines (in both directions) in the SARR States.

REQUEST FOR PRODUCTION NO. 107:

Please produce documents identifying or explaining how CSXT bills or invoices CSXI for rail-related transportation services. For each component of each CSXT invoice to CSXI, please identify or produce documents identifying the STB accounts in which CSXT records the payments received from CSXI, as well as the following information for CSXI for each year or partial year 2006 to the present:

- a. Total revenues;
- b. Amounts received to cover ramp lift costs;
- c. Amounts received to cover payments for over-highway truck costs;
- d. Amounts paid to CSXT;
- e. Overhead and administrative costs; and
- f. Margin or profit

REQUEST FOR PRODUCTION NO 108:

Please provide documents sufficient to show the following for each intermodal yard or terminal served by CSXI in the SARR States:

- a. Each asset owned or leased by CSXT;

- b. Each asset owned or leased by CSXI;
- c. Each asset owned or leased by an entity other than CSXT or CSXI, and
- d. All acquisition information and lease or other use payment information for each year or partial year 2006 to the present

REQUEST FOR PRODUCTION NO. 109:

Please produce the “operating agreement” between CSXT and CSXI for reimbursement of “approximate costs” as described in CSXT’s 2006 Class I Annual Report ACCA-R1, page 14C.

REQUEST FOR PRODUCTION NO. 110:

Please produce documents for each year or partial year 2006 to the present, which contain the following, in a computer readable format if available, for each trailer or container purchased or leased by CSXI (including privately-owned trailers or containers leased by CSXI and trailers or containers currently on order):

- a. Initial and number;
- b. Lessor, if leased;
- c. Tare weight;
- d. Purchase or order date, if purchased;
- e. Lease or order date, if leased;
- f. Total purchase price, if purchased;
- g. If leased, the type of lease (e.g., capital, operating, etc.) and term:

- h. If leased, the amount and frequency of lease payments;**
- i. If purchased, the AFE applicable to each purchased trailer or container;**
- j. If leased, the lease agreement including all supplements, amendments, exhibits and applicable schedules.**

REQUEST FOR PRODUCTION NO. 111:

Please produce documents sufficient to describe, in detail, all facilities, equipment, infrastructure or other physical assts of any kind, other than those that are described in Request for production No. 110, that are or have been owned or leased by CSXI, and used by CSXI in connection with the provision of services for which it receives freight revenue, for each year or partial year 2006 to the present.

REQUEST FOR PRODUCTION NO. 112:

Please produce documents sufficient to describe, in detail, all personnel employed by CSXI in connection with the provision of services for which it receives freight revenue, for each year or partial year 2006 to the present, including but not limited to each employee's position and responsibilities; annual compensation (including all benefits); and for employees who do not dedicate 100% of their on-duty time to the provision of services described herein, the percentage of each such employee's time that is so dedicated.

REQUEST FOR PRODUCTION NO. 113:

Please produce documents sufficient to describe, in detail, all services purchased by CSXI from third parties that are necessary or incident to the provision of services by CSXI for which it receives freight revenue, including but not limited to all amounts paid for such third party services, for each year or partial year 2006 to the present.

**SEMINOLE ELECTRIC
COOPERATIVE, INC.**

By: Kelvin J. Dowd
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Dated: December 15, 2008

**Attorneys for
Seminole Electric Cooperative, Inc.**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**SEMINOLE ELECTRIC COOPERATIVE,
INC.**

Complainant,

v.

CSX TRANSPORTATION, INC.

Defendant.

Docket No. 42110

**DEFENDANT'S RESPONSES AND OBJECTIONS TO COMPLAINANT'S FOURTH
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to 49 C.F.R. Part 1114 and other applicable rules and authority, CSX Transportation, Inc. ("CSXT"), through undersigned counsel, responds as follows to Complainant Seminole Electric Cooperative, Inc.'s ("SECI") Fourth Requests for Production of Documents (the "Requests")

GENERAL OBJECTIONS

CSXT's General Objections, as set forth herein, are to be considered objections to each of the specific interrogatories and document requests that follow CSXT's objections shall not waive or prejudice any objections that it may later assert.

1. CSXT objects to any and all definitions and/or instructions to the extent that the definitions and instructions either expand upon or conflict with 49 C.F.R. Part 1114, Subpart B. Further, CSXT objects to these Requests to the extent that they seek to impose obligations on CSXT greater than, or are inconsistent with, those imposed under 49 C.F.R. Part 1114, Subpart B.

2. CSXT objects to each and every Request to the extent that it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege, exemption, or protection from discovery or disclosure. In the event that any such information is inadvertently produced or provided, and such information is the proper subject of the attorney-client privilege, the attorney work-product doctrine and/or other applicable privilege, exemption, or protection, such disclosure is not to be construed as a waiver of any of these privileges, exemptions, or protections. CSXT reserves the right to demand that such inadvertently produced privileged information be returned to it and that all copies in SECI's possession, and that of its counsel, consultants, subsidiaries or other agents, be destroyed.

3. CSXT objects to each and every Request to the extent that it seeks production of information or data that is not relevant to the subject matter at issue in this proceeding and/or not reasonably calculated to lead to the discovery of admissible evidence.

4. CSXT objects to each and every Request to the extent that it would require CSXT to perform a "special study" to derive the requested information.

5. CSXT objects to each and every Request to the extent that it: a) is overly broad; b) is impermissibly vague or ambiguous, and fails to describe with reasonable particularity the information sought, or c) imposes undue burdens that outweigh any probative value the information sought may have in this proceeding.

6. CSXT objects to each and every Request to the extent that it purports to request information that is already in the possession of SECI. Further, CSXT objects to each and every Request to the extent that it seeks disclosure of information that is readily available or accessible to SECI.

7. CSXT objects to each and every Request to the extent that it purports to request information and data that is sensitive security information, classified or otherwise prohibited from disclosure, or documents whose public release could jeopardize the safety of the public and/or CSXT employees. Subject to and without waiving this objection, unless otherwise indicated CSXT will search for and produce non-privileged information or documents which are not classified, not prohibited from disclosure, and whose public release would not jeopardize the safety of the public or of CSXT employees.

8. CSXT objects to Definition 1 of the Requests¹ to the extent that it defines "Challenged Rates" to include CSXT scale rates set forth in Tariff CSXT-8200 that SECI has never used to move its traffic and that will not be used when CSXT's and Seminole's current contract expires in 2009. The relevant "Challenged Rates" are the common carrier rates CSXT established in CSXT-32531 on November 14, 2008, and CSXT's Responses apply to those rates.

9. CSXT objects to Definition 3 of the Requests to the extent that it defines CSXT to include all subsidiaries of CSXT, on the grounds that such definition is overbroad and unduly burdensome. CSXT specifically objects to producing data and information for non-wholly owned subsidiaries and for switching and terminal railroad subsidiaries, on the ground that producing responsive information for these entities, to the extent such information exists, would be unduly burdensome and would have only marginal relevance to the issues in this proceeding. As with all Requests to which CSXT is asserting an objection based on overbreadth or burden, CSXT will entertain a narrower request by SECI for specific documents and information pertaining to CSXT subsidiaries.

¹ The Requests incorporate by reference the Definitions and Instructions from SECI's First Requests for Admission, Interrogatories, and Requests for Production.

10. CSXT objects to SECI's Definition 6 defining "Document" to the extent it seeks to impose obligations broader than, or inconsistent with, those imposed by 49 C.F.R. Part 1114. CSXT further objects to the definition of "Document" to the extent it seeks information or data that is privileged, protected by the work product doctrine, or otherwise protected, exempted, or excluded from discovery or disclosure by an applicable privilege, protection, rule, or doctrine. In these Responses, CSXT will interpret the term "Document" to exclude any data or information that is protected from discovery or disclosure by such privilege, protection, doctrine, or rule.

11 CSXT objects to SECI's Definition 7 defining "'Identify' when used in connection with a document" to the extent it seeks to impose obligations or requirements beyond, in addition to, or inconsistent with discovery obligations under 49 C.F.R. Part 1114. CSXT has no duty to search for, gather, and catalog every document possibly implicated by an interrogatory with the more than seven pieces of information specified as required by the definition. This definition would impose an undue burden that outweighs any relevance or probative value the information sought may have in this proceeding. CSXT will respond to any interrogatory asking it to "identify" particular documents as if it were a request for production of those documents and respond in accordance with 49 C.F.R. § 1114.30

12. CSXT objects to SECI's Definition 11 defining "possession, custody, or control" to the extent it seeks to impose obligations or requirements beyond, in addition to, or inconsistent with CSXT's discovery obligations under 49 C.F.R. Part 1114.

13. CSXT objects to SECI's attempt to define "CSXT" to include CSX Intermodal, Inc. ("CSXI"). See Complainant's Second Requests for Production of Documents at 1. CSXT and CSXI are separate corporate entities. CSXI is neither a party to this litigation, nor a carrier regulated by the Board. CSXT further objects to this definition, and SECI's request that CSXT

produce CSXI documents and information, as unduly burdensome, overbroad, and not reasonably calculated to lead to the discovery of admissible evidence. CSXT will not produce data or documents maintained by CSXI or concerning functions, operations, or financial information that are the responsibility of CSXI.

14. CSXT objects to Instruction 2(a)(i) seeking the "name and description of the source database or other file" from which computer readable information is provided to SECI on the grounds that CSXT has no duty to undertake to catalog and document its internal systems as such a request would constitute a "special study," *see, e.g., Entergy Ark, Inc. v. Union Pac. R.R. Co.*, STB Docket No. 42104 (May 19, 2008); such information would be unduly burdensome to create and is not relevant to any issue in this proceeding, nor is such information necessary to enable SECI to use any information to be provided.

15. CSXT objects to Instruction 2(a)(ii) seeking "[a] description of how the records in the file produced were selected" as seeking information protected by the attorney-client privilege and/or work-product doctrine. Furthermore, such information would be unduly burdensome to create and is not relevant to any issue in this proceeding or necessary to enable SECI to use any information to be provided by CSXT.

16. CSXT objects to Instruction 2(a)(iii) seeking "[e]ach computer program (in native software and text file) and intermediate file used in deriving the files produced" as seeking to impose obligations or requirements beyond, in addition to, or inconsistent with discovery obligations under 49 C.F.R. Part 1114. CSXT has no obligation to provide SECI with any software used by CSXT in producing information responsive to SECI's Requests. Further, CSXT may not have rights under the applicable software licenses or agreements to provide SECI with copies. CSXT has no obligation to provide SECI with any "intermediate files" created by

CSXT in its effort to provide SECI with responsive information. Production of such files would be duplicative of the information in "final files." Moreover, any "intermediate files[s]" used to create files produced in this litigation are protected by the work-product doctrine.

17. CSXT objects to Instruction 2(b) as seeking to impose obligations or requirements beyond, in addition to, or inconsistent with discovery obligations under 49 C.F.R. Part 1114. CSXT has no duty to undertake to catalog and document all computer-readable information provided to SECI in the particular format specified by SECI. Responsive information provided in computer-readable format will be described to the extent necessary for SECI to use such information.

18. CSXT objects to SECI's Instruction 3 to the extent it attempts to impose obligations or requirements beyond, in addition to, or inconsistent with CSXT's discovery obligations under 49 C.F.R. Part 1114.

19. CSXT objects to SECI's Instruction 6 to the extent it attempts to impose obligations or requirements beyond, in addition to, or inconsistent with CSXT's discovery obligations under 49 C.F.R. Part 1114.

20. CSXT objects to SECI's Instruction 7 to the extent it attempts to impose obligations or requirements beyond, in addition to, or inconsistent with CSXT's discovery obligations under 49 C.F.R. Part 1114.

21. CSXT objects to SECI's failure to limit its requests to a relevant time period as overbroad and unduly burdensome. SECI seeks information that is not relevant to this proceeding and is not reasonably calculated to lead to the production of admissible evidence. Subject to, and without waiving this objection, unless otherwise indicated, CSXT's responses will cover the period from 2006 to the filing of the Complaint.

22. CSXT objects to SECI's requests calling for CSXT to identify records for a selected group of fifteen "SARR States" because those requests would require CSXT to perform burdensome special studies to identify the particular rail movements that originate, terminate or pass through those select states, while removing other movements. Where state-specific data can be produced readily for the SARR States without a special study, CSXT will produce state-specific data. Where such data cannot be produced without a special study, CSXT will produce system-wide data.

23. CSXT does not concede the relevance, materiality, competency, or admissibility as evidence of the information sought in the Requests. CSXT reserves its right to object on any ground to the use of the responses herein in this proceeding or in any subsequent appeal, proceeding, action, or trial.

SPECIFIC OBJECTIONS AND RESPONSES

In addition to its General Objections (which shall apply in full to each and every Discovery Request, without further enumeration), CSXT also asserts Specific Objections to each Request for Production. CSXT preserves all of its General Objections set forth above, and none of the following Specific Objections shall waive or limit the scope, breadth, generality, or applicability of those General Objections

REQUEST FOR PRODUCTION NO. 105.

Please produce the databases and computer programs (with all documentation related to these data bases and computer programs), in a computer readable format, sufficient to show all of the data requested in SECI's Request for Production No. 23 in Seminole's First Requests for each trailer and container handled by CSX Intermodal, Inc. ("CSXI") during the same time period, including but not limited to revenue received by CSXI from its customers ("freight revenue"), in connection with any traffic described in SECI's Request for Production No. 23, for each year or partial year 2006 to the present.

Response:

CSXT objects to this Request to the extent it requests the production of documents or data in the possession of or relating to CSXI. CSXT and CSXI are separate corporate entities. CSXI is neither a party to this litigation, nor a carrier regulated by the Board. CSXT will not produce data or documents maintained by CSXI or concerning functions, operations, or financial information that are the responsibility of CSXI. CSXT also objects to this Request to the extent that it requires CSXT to perform a special study by compiling and organizing data and documents in a manner different from how those data and documents are kept in the ordinary course of business.

REQUEST FOR PRODUCTION NO 106:

Please provide documents or data sufficient to show the link or tie between each train/container identified in your response to Request for Production No. 105 and the CSXT flat or intermodal car appearing in the CSXT waybill/car movement/train movement records or files that CSXT will produce pursuant to SECI's Request for Production Nos. 23, 46 and 47. If there are no records for CSXT flat cars in the CSXT waybill file, please identify or produce documents sufficient to show the authority used by CSXT and CSXI to move flat cars with CSXI trailers or containers over CSXT lines (in both directions) in the SARR States.

Response:

CSXT objects to this Request to the extent it requests the production of documents or data in the possession of or relating to CSXI. CSXT and CSXI are separate corporate entities. CSXI is neither a party to this litigation, nor a carrier regulated by the Board. CSXT will not produce data or documents maintained by CSXI or concerning functions, operations, or financial information that are the responsibility of CSXI. CSXT also objects to this Request to the extent that it requires CSXT to perform a special study by compiling and organizing data and documents in a manner different from how those data and documents are kept in the ordinary course of business.

REQUEST FOR PRODUCTION NO. 107

Please produce documents identifying or explaining how CSXT bills or invoices CSXI for rail-related transportation services. For each component of each CSXT invoice to CSXI, please identify or produce documents identifying the STB accounts in which CSXT records the payments received from CSXI, as well as the following information for CSXI for each year or partial year 2006 to the present:

- a. Total revenues;
- b. Amounts received to cover ramp lift costs,
- c. Amounts received to cover payments for over-highway truck costs;
- d. Amounts paid to CSXT;
- e. Overhead and administrative costs, and
- f. Margin or profit.

Response:

CSXT objects to this Request to the extent it requests the production of documents or data in the possession of or relating to CSXI. CSXT and CSXI are separate corporate entities. CSXI is neither a party to this litigation, nor a carrier regulated by the Board. CSXT will not produce data or documents maintained by CSXI or concerning functions, operations, or financial information that are the responsibility of CSXI. CSXT further objects to SECT's request for information on CSXI's "margin or profit" as irrelevant and overbroad. Subject to and without waiving these specific objections or the General Objections, CSXT responds that it will produce responsive, nonprivileged documents related to payments by CSXI to CSXT for rail transportation services to the extent they exist and can be located in a reasonable search.

REQUEST FOR PRODUCTION NO. 108:

Please provide documents sufficient to show the following for each intermodal yard or terminal served by CSXI in the SARR States:

- a. Each asset owned or leased by CSXT;

- b. Each asset owned or leased by CSXI;
- c. Each asset owned or leased by an entity other than CSXT or CSXI; and
- d. All acquisition information and lease or other use payment information for each year or partial year 2006 to the present.

Response:

CSXT objects to this Request to the extent it requests the production of documents or data in the possession of or relating to CSXI. CSXT and CSXI are separate corporate entities. CSXI is neither a party to this litigation, nor a carrier regulated by the Board. CSXT will not produce data or documents maintained by CSXI or concerning functions, operations, or financial information that are the responsibility of CSXI. Subject to and without waiving these specific objections or the General Objections, CSXT responds that it will produce responsive, nonprivileged documents related to assets owned or leased by CSXT (including assets owned by CSXT that CSXT has leased to CSXI) to the extent they exist and can be located in a reasonable search.

REQUEST FOR PRODUCTION NO. 109:

Please produce the "operating agreement" between CSXT and CSXI for reimbursement of "approximate costs" as described in CSXT's 2006 Class I Annual Report ACCA-R1, page 14C.

Response:

Subject to and without waiving the General Objections, CSXT responds that it will produce responsive, nonprivileged documents

REQUEST FOR PRODUCTION NO. 110:

Please produce documents for each year or partial year 2006 to the present, which contain the following, in a computer readable format if available, for each trailer or container purchased or leased by CSXI (including privately-owned trailers or containers leased by CSXI and trailers or containers currently on order):

- a. Initial and number;

- b. Lessor, if leased:
- c. Tare weight,
- d. Purchase or order date, if purchased;
- e. Lease or order date, if leased;
- f. Total purchase price, if purchased.
- g. If leased, the type of lease (e.g , capital, operating, etc) and term.
- h. If leased, the amount and frequency of lease payments;
- i. If purchased, the AFE applicable to each purchased trailer or container;
- j. If leased, the lease agreement including all supplements, amendments, exhibits and applicable schedules.

Response:

CSXT objects to this Request to the extent it requests the production of documents or data in the possession of or relating to CSXI. CSXT and CSXI are separate corporate entities. CSXI is neither a party to this litigation, nor a carrier regulated by the Board. CSXT will not produce data or documents maintained by CSXI or concerning functions, operations, or financial information that are the responsibility of CSXI. CSXT also objects to this Request to the extent that it requires CSXT to perform a special study by compiling and organizing data and documents in a manner different from how those data and documents are kept in the ordinary course of business.

REQUEST FOR PRODUCTION NO. 111:

Please produce documents sufficient to describe, in detail, all facilities, equipment, infrastructure or other physical assets of any kind, other than those that are described in Request for production No. 110, that are or have been owned or leased by CSXI, and used by CSXI in connection with the provision of services for which it receives freight revenue, for each year or partial year 2006 to the present.

Response:

CSXT objects to this Request to the extent it requests the production of documents or data in the possession of or relating to CSXI. CSXT and CSXI are separate corporate entities. CSXI is neither a party to this litigation, nor a carrier regulated by the Board. CSXT will not produce data or documents maintained by CSXI or concerning functions, operations, or financial information that are the responsibility of CSXI. CSXT also objects to this Request to the extent that it requires CSXT to perform a special study by compiling and organizing data and documents in a manner different from how those data and documents are kept in the ordinary course of business. CSXT further objects to the overbroad and unduly burdensome request to describe facilities "in detail."

REQUEST FOR PRODUCTION NO. 112:

Please produce documents sufficient to describe, in detail, all personnel employed by CSXI in connection with the provision of services for which it receives freight revenue, for each year or partial year 2006 to the present, including but not limited to each employee's position and responsibilities; annual compensation (including all benefits); and for employees who do not dedicate 100% of their on-duty time to the provision of services described herein, the percentage of each such employee's time that is so dedicated.

Response:

CSXT objects to this Request to the extent it requests the production of documents or data in the possession of or relating to CSXI. CSXT and CSXI are separate corporate entities. CSXI is neither a party to this litigation, nor a carrier regulated by the Board. CSXT will not produce data or documents maintained by CSXI or concerning functions, operations, or financial information that are the responsibility of CSXI. CSXT also objects to this Request to the extent that it requires CSXT to perform a special study by compiling and organizing data and documents in a manner different from how those data and documents are

kept in the ordinary course of business. CSXT further objects to the overbroad and unduly burdensome request to describe CSXI personnel "in detail."

REQUEST FOR PRODUCTION NO. 113:

Please produce documents sufficient to describe, in detail, all services purchased by CSXI from third parties that are necessary or incident to the provision of services by CSXI for which it receives freight revenue, including but not limited to all amounts paid for such third party services, for each year or partial year 2006 to the present.

Response:

CSXI objects to this Request to the extent it requests the production of documents or data in the possession of or relating to CSXI. CSXT and CSXI are separate corporate entities. CSXI is neither a party to this litigation, nor a carrier regulated by the Board. CSXT will not produce data or documents maintained by CSXI or concerning functions, operations, or financial information that are the responsibility of CSXI. CSXT also objects to this Request to the extent that it requires CSXT to perform a special study by compiling and organizing data and documents in a manner different from how those data and documents are kept in the ordinary course of business. CSXT further objects to the overbroad and unduly burdensome request to describe services purchased by CSXI "in detail."

Respectfully submitted,



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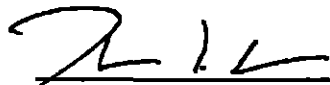
Counsel to CSX Transportation, Inc

Dated: January 14, 2009

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of January, 2009, I caused a copy of the foregoing Responses and Objections of CSX Transportation, Inc. to Complainant's Fourth Requests for Production of Documents to be served on the following parties by first class mail, postage prepaid or more expeditious method of delivery:

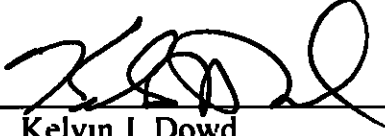
Kelvin J. Dowd
Slover & Loftus
1224 17th Street, NW
Washington, DC 20036


Matthew J. Warren

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of January, 2009, I served the foregoing Complainant's First Motion to Compel Discovery upon defendant CSX Transportation, Inc by causing a copy thereof to be hand-delivered to its counsel, as follows

G Paul Moates, Esq
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